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15 Attorneys for Defendants  
 VOSTU USA, INC., VOSTU LLC, AND VOSTU, LTD.

17 UNITED STATES DISTRICT COURT  
 18 NORTHERN DISTRICT OF CALIFORNIA  
 19 SAN JOSE DIVISION

20 ZYNGA INC.,  
 21 Plaintiff,  
 v.  
 22 VOSTU USA, INC.; VOSTU LLC; VOSTU,  
 23 LLC; VOSTU, LTD.; and DOES 1-5,  
 Defendants.

24 VOSTU USA, INC.; VOSTU LLC; and  
 25 VOSTU, LTD.

Counterclaimants

26 v.

27 ZYNGA, INC.,

28 Counterclaim Defendant

CASE NO. CV 11-2959 EJD

**VOSTU USA, INC.; VOSTU LLC; AND  
 VOSTU, LTD.'S ANSWER AND  
 COUNTERCLAIMS**

**DEMAND FOR JURY TRIAL**

1 Defendants Vostu USA, Inc., Vostu LLC, and Vostu, Ltd. (for purposes of this Answer,  
2 collectively “Vostu”), through their undersigned counsel of record, submit the following Answer,  
3 Affirmative Defenses, and Counterclaims in response to the complaint filed in the above-  
4 captioned matter:

5 **SUMMARY OF THE CASE**

- 6 1. Vostu denies the allegations of this paragraph.
- 7 2. Vostu admits that Zynga is the creator of the online social games with the largest  
8 number of users, including CityVille and FarmVille. Vostu admits that these games are on  
9 Facebook. Vostu admits that Zynga often has six to eight of the top ten most visited applications  
10 on Facebook according to third-party publications. Vostu is without knowledge or information  
11 sufficient to admit or deny the allegation regarding Zynga’s industry awards and on that basis  
12 denies it. Vostu denies the remaining allegations of this paragraph.
- 13 3. Vostu denies the allegations of this paragraph.
- 14 4. Vostu admits that Vostu, Ltd. has raised approximately \$50 million in venture  
15 funding. Vostu denies the remaining allegations of this paragraph.
- 16 5. Vostu denies the allegations of this paragraph.
- 17 6. Vostu denies the allegations of this paragraph.

18 **PARTIES**

- 19 7. On information and belief, Vostu admits the allegations of this paragraph.
- 20 8. Vostu admits that Vostu USA, Inc. is a corporation organized and existing under the  
21 laws of the State of Delaware.
- 22 9. Vostu admits that Vostu LLC is a limited liability company organized and existing  
23 under the laws of the State of Delaware.
- 24 10. Vostu denies that Vostu, LLC is a limited liability company organized and existing  
25 under the laws of the State of Delaware.
- 26 11. Vostu admits that Vostu, Ltd. is an exempted company formed under the laws of the  
27 Cayman Islands. Vostu denies that Vostu, Ltd.’s primary offices are in New York, New York.
- 28 12. Vostu admits that Vostu USA, Inc. maintains offices in New York, New York.

1 Vostu denies the remaining allegations of this paragraph.

2 13. This paragraph does not contain allegations so there is nothing to admit or deny. To  
3 the extent it contains allegations, they are denied.

4 14. This paragraph does not contain allegations so there is nothing to admit or deny. To  
5 the extent it contains allegations, they are denied.

6 15. Vostu denies the allegations of this paragraph.

7 **JURISDICTION AND VENUE**

8 16. Vostu admits that this Court has subject matter jurisdiction over the claims asserted  
9 against Vostu USA, Inc., Vostu LLC, and Vostu, Ltd.

10 17. Vostu admits that venue in this District is proper. Vostu denies the remaining  
11 allegations of this paragraph.

12 18. Vostu does not challenge personal jurisdiction in this matter. Vostu denies the  
13 allegations of this paragraph.

14 19. Vostu admits that Vostu has users in the United States and abroad, including in this  
15 District. Vostu denies the remaining allegations of this paragraph.

16 20. Vostu admits that Vostu's games are interactive games available on the Internet.  
17 Vostu admits that users create accounts, may purchase items, and may interact and chat with other  
18 users. Vostu denies the remaining allegations of this paragraph.

19 21. Vostu admits that the Vostu.com domain name is registered through GoDaddy.com  
20 and is hosted with Amazon.com. Vostu denies the remaining allegations of this paragraph.

21 22. Vostu admits that Exhibit 4 to the Complaint is a print-out of a webpage from  
22 www.vostu.com and that the quoted language appears on this page in Vostu, Ltd.'s Privacy  
23 Policy. Vostu denies the remaining allegations of this paragraph.

24 23. Vostu admits that portions of the website www.vostu.com are in English. Vostu  
25 denies the remaining allegations of this paragraph.

26 24. Vostu admits that there are Facebook application pages and Facebook fan pages for  
27 some Vostu games. Vostu admits that it uses Twitter to market its games. Vostu admits that it  
28 uses YouTube to market some of its games. Vostu admits that Twitter and YouTube are located

1 and headquartered in this District. Vostu is without knowledge or information sufficient to admit  
2 or deny the remaining allegations of this paragraph, and on that basis denies them.

3 25. Vostu admits that it allows users of its games to make payments through PayPal.  
4 Vostu admits that PayPal is located and headquartered in this District. Vostu denies the  
5 remaining allegations of this paragraph.

6 26. Vostu admits that users can purchase items in its games using U.S. Dollars using  
7 American Express and Discover cards.

8 27. Vostu denies the allegations of this paragraph.

9 28. Vostu denies the allegations of this paragraph.

### 10 **INTRADISTRICT ASSIGNMENT**

11 29. Vostu admits that this action is an intellectual property action for which district-wide  
12 assignment is appropriate. Vostu denies the remaining allegations of this paragraph.

### 13 **FACTUAL ALLEGATIONS**

14 30. Vostu admits that Zynga is the online social gaming company with the most users in  
15 the world. Vostu admits that Zynga's games are available on social networking platforms such as  
16 Facebook as well as on mobile platforms like iPhone and iPad. Vostu admits that users can invite  
17 friends to join them in playing Zynga's games online. Vostu admits that in the Zynga Poker  
18 game, users can invite friends on Facebook to join them at a virtual "poker table" to play for  
19 virtual currency and chat with friends in the game while playing. Vostu admits that Zynga  
20 provides this type of interaction among friends in a variety of online games. Vostu denies the  
21 remaining allegations of this paragraph.

22 31. Vostu is without knowledge or information sufficient to admit or deny the  
23 allegations of this paragraph, and on that basis denies them.

24 32. Vostu admits that Zynga has game titles that include CityVille, Café World,  
25 FarmVille, PetVille, and Zynga Poker. Vostu is without knowledge or information sufficient to  
26 admit or deny the remaining allegations of this paragraph, and on that basis denies them.

27 33. Vostu is without knowledge or information sufficient to admit or deny the  
28 allegations of this paragraph, and on that basis denies them.

1           34. Vostu admits that Vostu, LLC was founded in 2006 by three Harvard students as a  
2 social networking platform for Latin America.

3           35. Vostu admits that Vostu USA, Inc. had an office in Miami in 2008. Vostu admits  
4 that Vostu USA, Inc. has had its headquarters in New York since 2010. Vostu denies the  
5 remaining allegations of this paragraph.

6           36. Vostu admits that it launched its soccer game on its own platform and later on  
7 Google's social networking platform in Brazil, Orkut. Vostu denies the remaining allegations of  
8 this paragraph.

9           37. Vostu admits that Zynga launched Farmville in June 2009. Vostu is without  
10 knowledge or information sufficient to admit or deny the remaining allegations of this paragraph,  
11 and on that basis denies them.

12           38. Vostu denies the allegations of this paragraph.

13           39. Vostu denies the allegations of this paragraph.

14           40. Vostu is without knowledge or information sufficient to admit or deny Zynga's  
15 stated mission. Vostu denies the remaining allegations of this paragraph.

16           41. Vostu is without knowledge or information sufficient to admit or deny the  
17 allegations of this paragraph regarding Zynga's website and employment benefits, and on that  
18 basis denies them. Vostu denies the remaining allegations of this paragraph.

19           42. Vostu is without knowledge or information sufficient to admit or deny the  
20 allegations of this paragraph, and on that basis denies them.

21           43. Vostu denies the allegations of this paragraph.

22           44. Vostu admits that the logo for the philanthropic campaign on [www.vostu.org](http://www.vostu.org) depicts  
23 a seedling growing in a hand. Vostu denies the remaining allegations of this paragraph.

24           45. Vostu admits that it changed its logo from blue to red. Vostu denies the remaining  
25 allegations of this paragraph.

26           46. Vostu admits that Exhibit 12 appears to be printouts of press articles. Vostu denies  
27 the remaining allegations of this paragraph.

28           47. Vostu admits that Zynga's games include artwork, game mechanics, and features and

1 other tangible aspects. Vostu is without knowledge or information sufficient to admit or deny the  
2 remaining allegations of this paragraph, and on that basis denies them.

3 48. Vostu admits the allegations of this paragraph.

4 49. Vostu is without knowledge or information sufficient to admit or deny the allegation  
5 regarding Zynga's efforts to register copyrights, and on that basis denies it. The remaining  
6 allegations in this paragraph contain legal conclusions to which no response is required. To the  
7 extent a response is deemed necessary, those allegations are denied.

8 50. Vostu admits that CityVille is a virtual world game that allows users to grow crops,  
9 store goods, build businesses, collect rent, and become the mayor of their city. Vostu is without  
10 knowledge or information sufficient to admit or deny the remaining allegations of this paragraph,  
11 and on that basis denies them.

12 51. Vostu admits that Café World is a virtual world game that allows users to choose  
13 from dozens of dishes to cook. Vostu is without knowledge or information sufficient to admit or  
14 deny the remaining allegations of this paragraph, and on that basis denies them.

15 52. Vostu admits that FarmVille is a virtual world game that allows users to virtually  
16 farm with their friends by planting crops and raising farm animals. Vostu is without knowledge  
17 or information sufficient to admit or deny the remaining allegations of this paragraph, and on that  
18 basis denies them.

19 53. Vostu admits that PetVille is a virtual world game that allows users to raise a pet,  
20 dress it, and play with friends' pets. Vostu is without knowledge or information sufficient to  
21 admit or deny the remaining allegations of this paragraph, and on that basis denies them.

22 54. Vostu admits that Zynga Poker is a computerized version of the Texas Hold' Em  
23 poker game that allows users to play for virtual currency at a Zynga poker table with their friends.  
24 Vostu is without knowledge or information sufficient to admit or deny the remaining allegations  
25 of this paragraph, and on that basis denies them.

26 55. Vostu is without knowledge or information sufficient to admit or deny the  
27 allegations of this paragraph, and on that basis denies them.

28 56. Vostu denies the allegations of this paragraph.

1 57. Vostu denies the allegations of this paragraph.

2 58. Vostu denies the allegations of this paragraph.

3 59. Vostu admits that it launched MegaCity after Zynga launched CityVille. Vostu  
4 admits that both are city-building games available through social networking websites and  
5 applications, including Facebook. Vostu denies the remaining allegations of this paragraph.

6 60. Vostu denies the allegations of this paragraph.

7 61. Vostu admits that top bar in CityVille and MegaCity both contain a coin icon, a cash  
8 icon, an energy icon, a goods icon, and a level icon. Vostu denies the remaining allegations of  
9 this paragraph.

10 62. Vostu admits that CityVille and MegaCity both contain a move icon, a rotate icon, a  
11 remove icon, a tools icon, and a build icon. Vostu denies the remaining allegations of this  
12 paragraph.

13 63. Vostu admits that CityVille and MegaCity both contain building icons for new,  
14 housing, businesses, decorations, agriculture, shipping, community buildings, energy, and  
15 expansion. Vostu denies the remaining allegations of this paragraph.

16 64. Vostu denies the allegations of this paragraph.

17 65. Vostu denies the allegations of this paragraph.

18 66. Vostu denies the allegations of this paragraph.

19 67. Vostu denies the allegations of this paragraph.

20 68. Vostu denies the allegations of this paragraph.

21 69. Vostu admits that Exhibit 18 appears to be a printout of an article about MegaCity.  
22 Vostu denies the remaining allegations of this paragraph.

23 70. Vostu denies the allegations of this paragraph.

24 71. Vostu is without knowledge or information sufficient to admit or deny the  
25 allegations regarding Zynga's development of CityVille, and on that basis denies them. Vostu  
26 denies the remaining allegations of this paragraph.

27 72. Vostu admits that it made its games available on www.vostu.com and the Google-  
28 owned social networking website in Brazil, Orkut. Vostu denies the remaining allegations of this

1 paragraph.

2 73. Vostu admits the allegations of this paragraph.

3 74. Vostu admits that in May 2011, it expanded its existing games MegaCity,  
4 MiniFazenda, Café Mania, and Vostu Poker on the Facebook social networking platform. Prior  
5 to that, Vostu's games were available to users through Facebook Connect. Vostu denies the  
6 remaining allegations of this paragraph.

7 75. Vostu admits that in the future, it intends to expand additional games to the  
8 Facebook platform.

9 76. Vostu admits that users can play and are playing its games in the United States,  
10 including in this District. Vostu denies the remaining allegations in this paragraph.

11 77. Vostu incorporates by reference each and every response contained in the previous  
12 paragraphs.

13 78. Vostu is without knowledge or information sufficient to admit or deny the  
14 allegations of this paragraph, and on that basis denies them.

15 79. Vostu is without knowledge or information sufficient to admit or deny the  
16 allegations of this paragraph, and on that basis denies them.

17 80. Vostu denies the allegations of this paragraph.

18 81. Vostu denies the allegations of this paragraph.

19 82. Vostu denies the allegations of this paragraph.

20 83. Vostu denies the allegations of this paragraph.

21 84. Vostu denies the allegations of this paragraph.

22 85. Vostu denies the allegations of this paragraph.

23 86. Vostu denies the allegations of this paragraph.

#### 24 **AFFIRMATIVE DEFENSES**

25 Defendant asserts the following defenses without conceding the burden of proof as to any  
26 particular defense:

#### 27 **First Affirmative Defense**

28 Plaintiff's claim is barred by the doctrine of scènes à faire.



**Second Affirmative Defense**

Plaintiff's claim is barred to the extent Plaintiff seeks to enforce rights in unprotectable ideas, procedures, processes, systems, methods of operation, concepts, principles, or discoveries.

**Third Affirmative Defense**

Plaintiff's claim is barred by the doctrine of merger.

**Fourth Affirmative Defense**

Plaintiff's claim is barred to the extent it seeks to enforce copyright in materials or elements that are not original to the Plaintiff.

**Fifth Affirmative Defense**

Plaintiff's claim is barred because it seeks to enforce copyright registrations in which it committed fraud on the Copyright Office by misstatements or omissions that were material to the registrations and material to the purpose for which the Plaintiff invokes the registrations in this action.

**Sixth Affirmative Defense**

Plaintiff's claim is barred by laches, estoppel, knowledge, consent, and acquiescence.

**Seventh Affirmative Defense**

Plaintiff's claim is barred by the doctrine of unclean hands.

**Eighth Affirmative Defense**

Plaintiff's claim is barred by the doctrine of implied license.

**Ninth Affirmative Defense**

Plaintiff's claim is barred because of copyright misuse.

**Tenth Affirmative Defense**

Plaintiff's claim is barred by the doctrine of fair use.

**Eleventh Affirmative Defense**

Plaintiff's claim is barred by the *de minimis* doctrine.

**Twelfth Affirmative Defense**

Plaintiff's claim is barred by the doctrine of independent creation.

1 **COUNTERCLAIMS**

2 Vostu hereby asserts the following counterclaims against Zynga.

3 **INTRODUCTION**

4 1. This case is an effort by Zynga to extend its worldwide domination in online social  
5 gaming by running a legitimate competitor off the road using illegitimate means. Zynga has  
6 targeted Vostu as a competitor, particularly in Brazil where Vostu has the largest share of the  
7 social gaming market. Vostu believes, and therefore alleges, that Zynga is trying to use this  
8 litigation, which it announced to the press before it even complained to Vostu, to smear Vostu  
9 with baseless infringement allegations and attack a rival just as Zynga seeks to enter that rival's  
10 primary market.

11 2. Zynga accuses Vostu of simply being too much like Zynga, by publishing games in  
12 the same categories as Zynga, by engaging in philanthropic activities like Zynga, by incorporating  
13 in Vostu's games certain features that are standard in the online social gaming industry that both  
14 Zynga and Vostu share with other competitors, by modeling certain business attributes on Zynga,  
15 and by adopting a red logo. It accuses Vostu of being called "the Zynga of Brazil" by third  
16 parties over whom Vostu has no control. Zynga has not alleged, and cannot allege, that Vostu has  
17 sought to deceive the marketplace or has pretended to be Zynga. Zynga's allegations focus on an  
18 array of specious points on which Zynga has no lawful enforceable rights against Vostu. Zynga's  
19 deceptive allegations are at their foundation a vicious effort to malign Vostu for competing with  
20 Zynga. Zynga has watched Vostu closely as a potential competitor for years, and it even  
21 discussed a strategic relationship with Vostu beginning in August 2010. The triggers for Zynga's  
22 lawsuit at this point against Vostu are threefold: (1) Zynga's entry into Brazil, where it intends to  
23 displace Vostu as the leading gaming company on social networks; (2) Vostu's arrival on  
24 Facebook, which Zynga claims as its exclusive turf; and (3) Zynga's initial public offering, where  
25 Zynga must face probing and legitimate questions about barriers to entry in Zynga's market by  
26 demonstrating its intent to demolish any potential competitor it may face.

27 3. Zynga is the largest provider of online social games in the United States and much of  
28 the English-speaking world.

1           4. Zynga models its own games on those of others. Its practice of integrating  
2 significant aspects of earlier game designs, game ideas, game elements, and game categories into  
3 its own business has attracted attention in the online social gaming world for years.

4           5. Zynga's practice of copying from others' games has gained notoriety in the popular  
5 press as well.

6           6. Last year, SF Weekly magazine did a profile article on Zynga. The title of that  
7 article was "FarmVillains" and it bore the headline "Steal someone else's game. Change its  
8 name. Make millions. Repeat." Exhibit A to this Counterclaim is a copy of that article.

9           7. In the article, a former Zynga employee recounted that, at a meeting with Zynga's  
10 CEO Mark Pincus, Pincus proclaimed "I don't [expletive deleted] want innovation. . . . You're  
11 not smarter than your competitor. Just copy what they do and do it until you get their numbers."

12           8. Now, Zynga accuses Vostu of copying Zynga's games.

13           9. Zynga's allegations against Vostu are not just deeply cynical. They also mask a fatal  
14 flaw in Zynga's case: Zynga cannot claim copyright protection over material that Zynga did not  
15 originally create.

16           10. The very elements of Zynga's games that Zynga says Vostu copied are not  
17 protectable elements that Zynga originally created. They are, and have been, common in other  
18 games before Zynga added the elements into its games.

19           11. Vostu's games exhibit significant differences in game stylistics, play, and features  
20 from those of Zynga's games. Those differences reflect enormous independent creativity, effort,  
21 and skill by Vostu's game designers in developing novel games and in refining and improving  
22 those games based upon data from actual use by Vostu's users of those games and based upon the  
23 cultural and demographic differences in Brazil.

24           12. Zynga in its Complaint has misleadingly cherry-picked a handful of alleged  
25 similarities between Zynga's games and Vostu's games, taking tiny portions and features out of  
26 the context of the companies' respective games and out of the context of a broad range of  
27 standard features that are common to, and indeed dictated by, game genres in which many  
28 companies compete with similar features. The similarities that Zynga alleges do not flow from

Zynga's own original creative activities and copying by Vostu. Instead they flow from common game genres. Genres, and game elements that are typical of, dictated by, inseparable from, indispensable to, or standard features of those genres, are not subject to copyright protection under United States law.

13. Because Vostu's games are not legally substantially similar to Zynga's games, Vostu is entitled to a declaration that it bears no liability to Zynga for copyright infringement.

14. Zynga's Complaint uses numerous side-by-side comparisons to paint a picture of Vostu copying what Zynga claims as Zynga's original copyrighted expression. In fact, Zynga's side-by-side pictures of isolated elements of the games are highly misleading and incomplete. An accurate comparison instead requires placing the elements in the context of numerous other games of the same genres from multiple providers, many of which pre-date Zynga's own games. The similar elements are standard features in those genres, as many games of other producers show. The complete picture demonstrates that the elements that Zynga portrays as its own are not Zynga's original creations or a type of standard expression over which Zynga can claim copyright protection. Instead, the complete context shows the tremendous similarity of standard elements across numerous games in a genre.

15. In this Introduction, Vostu furnishes merely one example of Zynga's misleading comparisons; it will address others in the specific claims of the Counterclaim. For example, Zynga included the following image comparison in its Complaint:



16. Zynga also provided this image comparison to the press and rapidly disseminated it

worldwide through the Internet.

17. What Zynga's Complaint did not reveal is that Zynga's CityVille game was not the first online social game to use a city-building theme or the stylistic elements Zynga presented in the Zynga CityVille image above.

18. Before Zynga released CityVille, other online social game providers, including Gamester and Playdom, had released city-building games.

19. Images from those other city-building games, which preceded Zynga's, show layouts, graphics, color schemes, information arrangements, and other visual elements that demonstrate that the elements in the images in Zynga's Complaint that Zynga claims to be proprietary to Zynga are not Zynga's original ideas or expression. To the contrary, these elements are standard, well-accepted elements in the game genre.

20. Below are images from six different city-building games in the marketplace, with the names and introduction dates of the respective games.

**Playdom's Social City  
(March 2010)**



**Gamester's Townster  
(September 2010)**



**LIFO Interactive's Train  
City (December 2010)**



**Zynga's CityVille  
(December 2010)**



**Vostu's MegaCity  
(April 2011)**



**Que Pasa's Cidade  
Maravilhosa (May 2011)**



21. As these images reflect, online social games within an established genre can at first



1 blush look very similar. But a closer look reveals that the similarity stems from stock elements  
2 that are as a practical matter typical of, dictated by, inseparable from, indispensable to, or a  
3 standard treatment of games in a genre.

4 22. In this case, Zynga seeks to appropriate to itself numerous elements of various game  
5 genres that it did not originally create. It claims exclusive and preclusive rights in those elements  
6 and features, even though it is not entitled to. It wrongly claims them in an unlawful effort to  
7 thwart a credible competitor and to protect its own dominant position.

8 23. Vostu, through these counterclaims, asks this Court (a) to rebuff Zynga's effort to  
9 claim preclusive rights in what it did not originate, (b) to stop Zynga's efforts to claim copyright  
10 protection over non-protectable elements, and (c) to protect Vostu, as a lawful competitor, against  
11 Zynga's overreaching claims.

#### 12 **THE PARTIES**

13 24. The Defendants and Counterclaim Plaintiffs in this case are Vostu USA, Inc., Vostu  
14 LLC, and Vostu Ltd., which these Counterclaims refer to together as "Vostu." Vostu USA, Inc. is  
15 a Delaware corporation with its principal place of business in New York, New York. Vostu LLC  
16 is a Delaware limited liability company. Vostu, Ltd. is an exempted company formed under the  
17 laws of the Cayman Islands.

18 25. Vostu believes and therefore alleges that Zynga is a Delaware corporation and has its  
19 principal place of business in San Francisco.

#### 20 **JURISDICTION AND VENUE**

21 26. Vostu brings its counterclaim for declaratory relief pursuant to the Declaratory  
22 Judgment Act, 28 U.S.C. § 2201(a), and the Copyright Act, 17 U.S.C. §§ 106 and 501.

23 27. This Court has subject matter jurisdiction over Vostu's counterclaim pursuant to 28  
24 U.S.C. §§ 1331 and 1338.

25 28. Venue is proper in this District because Zynga is subject to personal jurisdiction  
26 within it.

1 **FACTUAL ALLEGATIONS**

2 **The Social Gaming Industry**

3 29. In only a few years, the online social gaming industry has grown worldwide at an  
4 exciting and exponential rate. Ten years ago, there was no market for online social games.  
5 Today, more than half a billion people play online social games worldwide.

6 30. Online social games are casual games that users can play on any number of social  
7 networks like Facebook, MySpace, and Orkut (the largest social media platform in Brazil). While  
8 playing the games, users can interact with their friends who are also playing the game. Users can  
9 earn virtual money through game play, and they can use that virtual money to buy virtual goods  
10 within the games. Users also can use real world currency to buy virtual goods.

11 31. There are a variety of popular game genres in the online social game world.  
12 Common genres include farming games, restaurant management games, city-building games, pet  
13 care games, aquarium games, poker games, sports games, and mafia games. Each genre of games  
14 has numerous stock elements that many different game developers include in their games of that  
15 genre. Zynga is no exception.

16 **Vostu and Its Success in the Brazilian Social Gaming Market**

17 32. Vostu is the market leader for social gaming in Latin America.

18 33. Vostu is the leading game developer on Orkut, Brazil's most popular social  
19 networking platform.

20 34. From 2009 to the present, Vostu has grown from 1.3 million registered users to more  
21 than 35 million registered users.

22 35. Vostu did not achieve its success overnight. Its work force – now numbering more  
23 than 500 dedicated, talented, and passionate programmers, game developers, data analysts, and  
24 statisticians in Buenos Aires, São Paulo, and New York – has worked tirelessly for nearly two  
25 years to develop highly innovative and hugely popular games.

26 36. Vostu launched its first online social game – a soccer game called Joga Craque – on  
27 Orkut in May 2009. This is a role-playing game that allows the player to bring up a soccer player  
28 from obscurity into the Brazilian national team. More than two years later, Joga Craque remains

1 one of the most popular soccer games in the Brazilian market.

2 37. MiniFazenda, a farming game by Vostu launched in November 2009, continues to be  
3 one of the most popular games in Brazil. In early April 2011, Vostu asked users to tweet about  
4 their game play in MiniFazenda, and “MiniFazenda” immediately became one of the most  
5 “trending” topics on Twitter in Brazil. “Trending” is a measure for the momentary importance of  
6 a topic on the Twitter network.

7 38. Vostu has combined the experience, intellect and creative energies of its leadership  
8 team with its dedicated employees to develop a sophisticated and leading understanding of the  
9 gaming market.

10 39. Vostu has introduced games in some well-established genres – farming, restaurant  
11 management, pet care, poker, and city-building – but Vostu’s games are not just static games that  
12 are released and never changed. Instead, Vostu continually refreshes the content of its games.  
13 Vostu releases new items, creates new narratives, and programs new functionality and game play  
14 for game users at least weekly, and often daily.

15 40. Moreover, Vostu has become a market leader, in part, due to its unparalleled ability  
16 to “localize” its games. In other words, Vostu develops innovative features and mechanics for its  
17 games that are tailored to the particular cultural and social demographics of its users, who up to  
18 this point have largely been in South America.

19 41. To improve its games and to tailor them to the local population, Vostu regularly  
20 surveys its users. It studies what aspects of the games are most attractive to its users and it plans  
21 future developments for the games based on that analysis. In addition to surveying users, Vostu  
22 studies data about user activity in the games. It uses that information to improve its games.

23 42. Vostu’s games are designed to allow users to play them with any social networking  
24 account, and with their friends across social networks. This is uncommon for games in the online  
25 social games industry.

26 43. With these efforts, Vostu has grown in popularity through exciting games that attract  
27 and retain dedicated users who have made Vostu famous by word of mouth. Although there are  
28 many competitors in each game category, few have achieved the level of success that Vostu has



1 achieved in Brazil. Vostu is strategically positioned to launch into as-yet largely untapped social  
2 gaming markets throughout South America and throughout the Spanish- and Portuguese-speaking  
3 world.

4 44. As a result, Vostu successfully raised approximately \$50 million in venture financing  
5 from some of the most respected venture capital firms, specifically Accel Partners, Tiger Global,  
6 Intel Capital, and General Catalyst.

7 45. Vostu believes and therefore alleges that Zynga now aims to develop the Brazilian  
8 market for its games.

9 46. Vostu believes and therefore alleges that, before February 2011, Zynga did not have  
10 a Portuguese-language game on any social network and did not market its games in Brazil.

11 47. Vostu believes and therefore alleges that Zynga seeks to displace Vostu from the top  
12 of the social gaming market in Brazil.

13 48. Vostu believes and therefore alleges that Zynga launched its most popular game in  
14 Portuguese around February 2011.

15 49. Vostu believes and therefore alleges that Zynga began marketing its games in Brazil  
16 in February 2011.

17 50. Vostu believes and therefore alleges that Zynga has struggled to gain any real  
18 success or traction in Brazil thus far.

19 **Zynga's Global Dominance of Social Games Outside Brazil by Copying Its Competition**

20 51. Outside Brazil, Zynga dominates the global social gaming market.

21 52. Zynga did not begin its path to market dominance through creative game-making and  
22 innovation. In fact, Vostu believes and therefore alleges that Zynga explicitly discourages  
23 innovation by its game designers and did so during the period when it achieved market  
24 domination.

25 53. Instead, Vostu's believes and therefore alleges that Zynga's path to market  
26 dominance started with its adeptness at watching the marketplace for a successful social game  
27 from a smaller competitor, playing and evaluating that game, and then releasing its own game that  
28 closely followed the predecessor game.

1           54. Zynga did this early on with its Mafia Wars game, released in August 2008. Mafia  
2 Wars closely resembled Psycho Monkey's Mob Wars game, which was released in February  
3 2008.

4           55. In 2009, Mob Wars developer Psycho Monkey sued Zynga for copying its Mob  
5 Wars game. Exhibit B is a copy of an article by TechCrunch that describes the case, which is also  
6 available at [http://techcrunch.com/2009/02/14/mob-wars-creator-sues-zynga-for-copyright-](http://techcrunch.com/2009/02/14/mob-wars-creator-sues-zynga-for-copyright-infringement/)  
7 [infringement/](http://techcrunch.com/2009/02/14/mob-wars-creator-sues-zynga-for-copyright-infringement/).

8           56. Vostu believes and therefore alleges that Zynga settled the litigation filed by Psycho  
9 Monkey.

10           57. Nevertheless, from 2009 to the present, Vostu believes and therefore alleges that  
11 Zynga's Mafia Wars has had more users than Psycho Monkey's Mob Wars.

12           58. After Mafia Wars, Zynga built and released FarmVille, which closely followed  
13 Slashkey's FarmTown, SocialApps' myFarm, and various farming games from China.

14           59. Vostu believes and therefore alleges that Zynga cross-promoted FarmVille to its  
15 users playing Mafia Wars, which had continued to grow in popularity since its launch in 2008.

16           60. Zynga cross-promotes its games through a cross-promotional tool bar that runs at the  
17 top and/or bottom of the game and displays a graphic icon for each of Zynga's other games. The  
18 user can click on that icon and be transferred to the other game. Zynga also cross-promotes its  
19 games through in-game promotions. For example, a person playing Mafia Wars might get a  
20 special limited edition pistol decorated with a barn if he signs up to play FarmVille.

21           61. Shortly after its release, FarmVille became the most popular game on Facebook.

22           62. Vostu believes and therefore alleges that within a month, FarmVille had more  
23 monthly active users than FarmTown. Monthly active users ("MAUs") are a measure of the  
24 number of people playing a game each day. It is to social gaming what Nielsen ratings are to  
25 television shows.

26           63. Vostu believes and therefore alleges that within a month of FarmVille's release,  
27 FarmTown saw a decrease in MAUs.

28           64. Vostu believes and therefore alleges that in October 2009, Zynga released Café

1 World, which closely resembled Playfish's Restaurant City.

2 65. Vostu believes and therefore alleges that Zynga cross-promoted Café World to its  
3 users on Mafia Wars and FarmVille.

4 66. Vostu believes and therefore alleges that within one month, Café World had more  
5 MAUs than Playfish's Restaurant City.

6 67. Vostu believes and therefore alleges that after Café World's launch, Restaurant City  
7 saw a decrease in MAUs.

8 68. Vostu believes and therefore alleges that in November 2009, Zynga launched its  
9 game FishVille, which closely resembled Crowdstar's Happy Aquarium.

10 69. Vostu believes and therefore alleges that Zynga cross-promoted FishVille to its users  
11 on Mafia Wars, FarmVille, and Café World.

12 70. Vostu believes and therefore alleges that within one month, FishVille had more  
13 MAUs than Crowdstar's Happy Aquarium.

14 71. Vostu believes and therefore alleges that after FishVille's launch, Happy Aquarium  
15 saw a decrease in monthly active users.

16 72. Vostu believes and therefore alleges that in December 2009, Zynga launched its  
17 game PetVille, which closely resembled Playfish's Pet Society.

18 73. Vostu believes and therefore alleges that Zynga cross-promoted PetVille to its users  
19 on Mafia Wars, FarmVille, Café World, and FishVille.

20 74. Vostu believes and therefore alleges that within one month, PetVille had more  
21 MAUs than Playfish's Pet Society.

22 75. Vostu believes and therefore alleges that after PetVille's launch, Pet Society saw a  
23 decrease in MAUs.

24 76. With each of its early games that closely followed predecessor games, Zynga's  
25 market dominance grew. It continued to cross-promote each new game with its larger and larger  
26 user base.

27 77. Vostu believes and therefore alleges that with the money Zynga received from these  
28 early games, plus its venture capital infusion, Zynga also began to spend a tremendous amount of

1 money advertising on Facebook to attract new users.

2 78. This pattern, built on early games that “cloned” rival games, led to Zynga’s early  
3 market dominance.

4 79. Numerous articles such as the “FarmVillains” article in Exhibit A (discussed above  
5 at Paragraphs 6 -7) described Zynga’s early growth through the practice of “cloning” its rivals’  
6 games.

7 80. Business Insider published an article in January 2010 with the title “Zynga’s Secret  
8 to Success: Steal Great Ideas.” It contained a slide show with side-by-side comparisons of  
9 Zynga’s most popular games and the similar-looking games that preceded Zynga’s games.  
10 Exhibit C is a copy of the article, which resides on the Web at  
11 <http://www.businessinsider.com/how-zynga-is-just-like-microsoft-2010-1#>.

12 81. Zynga’s practice of borrowing ruthlessly from its competitors as described above left  
13 Zynga with a controversial reputation in the gaming industry.

14 **Zynga’s Use of Discussions with Vostu About a Strategic Relationship, Which Gleaned**  
15 **Competitive Information**

16 82. One way that Zynga has grown to its dominant position is by buying up the  
17 competition.

18 83. A May 31, 2011 investment research report by Cowen & Co. on Facebook gaming  
19 states: “Zynga has established an utterly dominating market share position in the space and  
20 appears poised to extend it through a very aggressive acquisition strategy (14 transactions in the  
21 last year).”

22 84. Zynga’s reputation for acquiring smaller companies may encourage erstwhile  
23 competitors to share their secrets during acquisition talks. Vostu believes and therefore alleges  
24 that Zynga has a history of using acquisition discussions with competitors for improper purposes.

25 85. On June 17, 2011, an online social gaming company called SocialApps filed a  
26 complaint against Zynga in the Central District of California. The case is *SocialApps LLC. v.*  
27 *Zynga, Inc.*, No. CV11-00919-cjc (C.D. Cal.).

28 86. SocialApps’ complaint alleges that Zynga professed interest in learning about and

1 potentially acquiring SocialApps.

2 87. SocialApps' complaint alleges that Zynga used the acquisition process in May 2009  
3 to wrongfully appropriate confidential source code for SocialApps' game "myFarm."

4 88. SocialApps' complaint further alleges that Zynga used that source code in its  
5 subsequently released farming game, "FarmVille."

6 89. SocialApps alleges that Zynga thereafter terminated all communication and within  
7 months launched FarmVille using SocialApps' source code for myFarm.

8 90. As discussed above, once Zynga launched FarmVille, Vostu believes and therefore  
9 alleges that Zynga leveraged its large user base and FarmVille quickly overtook myFarm and all  
10 other farming games in the market in terms of metrics measuring use.

11 91. Vostu thus believes and therefore alleges that Zynga similarly entered talks with  
12 Vostu under the guise of starting a strategic relationship to learn about the Brazilian social  
13 gaming market, gained information from Vostu, promptly thereafter released its own competing  
14 games in Brazil, and then launched this litigation and its accompanying press campaign to  
15 compete unfairly against Vostu.

16 *Communications in August 2010*

17 92. In August 2010, Peter Grassi, in corporate development at Zynga, initiated contact  
18 with Vostu's chief executive officer Daniel Kafie to learn more about the company and its online  
19 social games.

20 93. Specifically, on August 3, 2010, Grassi wrote to admin@vostu.com: "Greetings, Can  
21 you please pass my note along to Daniel Kafie so I may get in touch? Regards, Peter Grassi,  
22 Corporate Development, Zynga."

23 94. On August 11, 2010, Grassi wrote to Kafie, copying Terence Fung of Zynga, and  
24 said: "Hello Daniel, We enjoyed speaking with you today and look forward to next steps. Let's  
25 lock in a date for your visit to our studio in San Francisco when you have had time to look into  
26 your calendar. As a side note, I will be out of the office the next couple days but I have copied  
27 Terence on this email. Terence was of course also on the call and is the head of our Corp Dev  
28 function. Regards, Peter."

1           95. During the August 11, 2010 conversation with Kafie and the follow-up emails,  
2 neither Grassi nor Fung mentioned or expressed any concern about Vostu's games or any  
3 purported similarity to Zynga's games.

4                           ***Communications in the Fall of 2010***

5           96. In September and October 2010, there were communications between David  
6 Wehner, chief financial officer of Zynga, and Stan Shuman, Vostu's banking representative at  
7 Allen & Company.

8           97. Vostu believes and therefore alleges that at no point during the September and  
9 October 2010 communications between Wehner and Shuman did Wehner mention or express any  
10 concern about Vostu's games or any purported similarity to Zynga's games.

11                           ***Communications in December 2010 and January 2011***

12           98. On December 7, 2010, Fung sent an email to Kafie with the subject "re: next steps  
13 with Zynga." Fung said "Hey Daniel, congrats on the financing! Are you free later this week /  
14 early next week for a call? Best, Terence."

15           99. In the December 7, 2010 email, Fung expressed nothing to Kafie about any  
16 purported similarity between Zynga's games and Vostu's games.

17           100. On January 13, 2011, Shuman talked to Wehner by telephone. Wehner suggested  
18 that representatives from Zynga and Vostu meet at Zynga's offices in California at the end of  
19 January.

20           101. During the January 13, 2011 call, Wehner said nothing to Shuman about any  
21 purported similarity between Zynga's games and Vostu's games.

22           102. Around the same time, Wehner sent a message to Tahiana D'egmont, Vostu's chief  
23 marketing officer, through the professional network website LinkedIn, and asked to connect.  
24 Wehner expressed nothing in that message to D'egmont about any purported similarity between  
25 Zynga's games and Vostu's games.

26                           ***The January 31, 2011 Meeting Between Vostu and Zynga***

27           103. Kafie (founder and chief executive officer), Mario Schlosser (founder and chief  
28 scientific officer), Matias Recchia (chief operating officer), and Josh Kushner (founder) from

1 Vostu met with Brian Taptich (vice president of international development), Wehner (chief  
2 financial officer), Owen Van Natta (executive vice president of business operations), and Fung  
3 (head of corporate development) from Zynga on January 31, 2011.

4 104. Kafie, Schlosser, Recchia, Kushner, Taptich, Wehner, Van Natta, and Fung met at  
5 Zynga's offices in San Francisco.

6 105. The meeting lasted approximately two hours.

7 106. Vostu believes and therefore alleges that the Zynga team in attendance at the January  
8 31, 2011 meeting had responsibility at that time for acquisitions and business development.

9 107. During the January 31, 2011 meeting, there was discussion of Vostu's games.

10 108. Vostu believes and therefore alleges that during the January 31, 2011 meeting,  
11 Zynga's attendees were aware of MiniFazenda, Vostu Poker, Pet Mania, and Café Mania.

12 109. During the January 31, 2011 meeting, Zynga's chief financial officer Wehner  
13 mentioned several Vostu games by name.

14 110. During the meeting, Zynga's executives asked who at Vostu made the final decision  
15 on games and game design.

16 111. In response, Vostu's management team explained that product managers work  
17 autonomously, but that Mario Schlosser and the chief creative officer have the ultimate say.

18 112. Schlosser was in attendance at the January 31, 2011 meeting.

19 113. Nobody at the meeting expressed any concern to Schlosser about any purported  
20 similarity between Vostu's games or game design and Zynga's games or game designs.

21 114. During the January 31, 2011 meeting, there was discussion of the Brazilian social  
22 gaming market.

23 115. Zynga's Bryan Taptich specifically asked Vostu's management team what they  
24 would do to enter the Brazilian market if they were Zynga.

25 116. Vostu's team told Zynga about how Vostu tailors its games specifically to a local  
26 demographic, which Vostu believes is different than what anyone else in the social gaming world  
27 does. Zynga told Vostu during the meeting that they thought Vostu was good at this  
28 "localization" in Brazil and that it was something Zynga did not do. Zynga asked Vostu if Vostu

1 would be interested in becoming Zynga's international arm to run all of Zynga's international  
2 operations.

3 117. "Localization" is how a company adapts its games to the local demographics and  
4 culture. It is more than translating the games into that country's specific language. Instead, it is  
5 adapting the games to the lifestyle, game-play patterns, and culture of the population. For  
6 example, MegaCity has a feature that involves one of the most popular musicians in Brazil.  
7 Further, the content of Vostu's games differs by country. MegaCity in Mexico has different  
8 content and functionality than MegaCity in Brazil.

9 118. At the January 31, 2011 meeting, Vostu discussed its localization strategies with  
10 Zynga.

11 119. To that end, Zynga's executives said during that meeting that they would be  
12 interested in acquiring Vostu and using Vostu to build Zynga's international operations from the  
13 ground up so that Zynga could offer truly localized games not only in Latin America, but also in  
14 the rest of the world.

15 120. During the January 31, 2011 meeting, Zynga specifically praised the Vostu  
16 management team for building a highly skilled and effective local workforce in South America.

17 121. During the January 31, 2011 meeting, there was discussion of Vostu's development  
18 methodology.

19 122. During the January 31, 2011 meeting, there was discussion of Vostu's financials.

20 123. During the January 31, 2011 meeting, Zynga's team told Vostu's team how  
21 impressed they were with Vostu.

22 **Zynga Never Alleged Copying by Vostu in Its Communications with Vostu.**

23 124. At no point before or during the January 31, 2011 meeting did anyone from Zynga  
24 express any allegation that Vostu was copying Zynga's games.

25 125. At no point before or during the January 31, 2011 meeting did anyone from Zynga  
26 express any concern about any similarities between Vostu's games and Zynga's games.

27 126. After the January 31, 2011 meeting, Zynga representatives continued to  
28 communicate with Vostu.



1 127. In the communications between Vostu representatives and Zynga representatives  
2 after January 31, 2011 and up to the time of the filing of the Complaint in this action, no Zynga  
3 representatives mentioned to anyone from Vostu any alleged copyright violations.

4 128. On February 2, 2011, Wehner wrote to Vostu: "Thanks for coming in. It was great  
5 to meet you guys as well. Brian Taptich is going to be point in exploring what we might do  
6 together. Best, Dave."

7 129. Vostu believes and therefore alleges that on or about February 4, 2011, Zynga  
8 launched all of its Facebook games in Portuguese.

9 130. On February 7, 2011, Zynga's Taptich wrote to Vostu: "Guys: Very glad to be  
10 connected. We are still planning a trip to Buenos Aires and Sao Paolo in March (exact dates  
11 TBA) – seems logical next step would be to see your operations down there. Will keep you  
12 posted as plans come together, and let me know if you will be in SF in the meantime...Tap."

13 131. As of that February 7, 2011 email, over the ten months that Zynga and Vostu  
14 explored cooperation and collaboration, no one from Zynga had mentioned any alleged copyright  
15 infringement to anyone from Vostu.

16 132. Zynga personnel continued to approach Vostu in March 2011 to try to further  
17 discussions about working together.

18 133. Zynga personnel scheduled a trip to visit Vostu's facilities in South America in  
19 March 2011.

20 134. In the meantime, Vostu discovered that Zynga had launched its games in Portuguese  
21 following its January and February communications and meetings with Vostu, and that Zynga had  
22 hired one of Vostu's ex-employees to run Zynga's Brazilian operations.

23 135. Vostu cancelled Zynga's trip to visit Vostu's South American facilities at the end of  
24 March 2011 and stopped communicating with Zynga.

25 **Zynga Declares War in the Press with No Notice to Vostu**

26 136. On June 16, 2011, Zynga issued a press release announcing its litigation against  
27 Vostu.

28 137. Vostu believes and therefore alleges that Zynga sent a copy of the Complaint to the

1 online publication TechCrunch (www.techcrunch.com).

2 138. On June 16, 2011, TechCrunch published a story entitled, “WAR! Zynga Sues the  
3 Hell Out of Brazilian Clone Vostu.”

4 139. The TechCrunch article attached Zynga’s Complaint in this action, a video that is  
5 exhibit 1 to that Complaint, and all hard copy exhibits.

6 140. The TechCrunch article promptly appeared in media outlets around the world.

7 141. Vostu believes and therefore alleges that Zynga engaged in a coordinated strategy to  
8 cause the proliferation of negative press stories about Vostu simultaneous with the filing of  
9 Zynga’s Complaint.

10 142. Before June 16, 2011, no one from Zynga had ever told Vostu that Vostu’s games  
11 infringed Zynga’s copyrights.

12 **The Features and Elements that Zynga Seeks to Enforce Are Not Zynga’s Original**  
13 **Creations That Are Enforceable Against Others.**

14 143. Zynga suggests that it created and somehow “owns” the concepts of farming, city-  
15 building, restaurant management, pet care, and poker games on a social network.

16 144. That suggestion or claim rests on a false premise that Zynga originated these game  
17 genres. It did not.

18 145. Zynga provided a selective and highly misleading comparison of Zynga’s games and  
19 Vostu’s games in its Complaint.






146. This is the chart Zynga included in Paragraph 57 of its Complaint:

zynga®		vostu®	
Game	Launch Date	Game	Launch Date
	June 2009	 (Mini Farm)	January 2010
	May 2009		April 2010
	December 2009		April 2010
	September 2009		May 2010
	December 2010		April 2011

147. The following chart shows relevant facts that Zynga avoided. The center and right columns in the following chart are identical to the chart included in Paragraph 57 of Zynga's Complaint (except that some of the launch dates are edited for accuracy). The column on the left shows that for each of the games that Zynga alleges Vostu wrongfully copied, games in that genre were already in the marketplace when Zynga launched its games. The images appear with the names and introduction dates of their respective games.

Examples of Pre-Zynga Games	Zynga	Vostu
<p>FarmTown (April 2009)</p>  <p>Barn Buddy (May 2009)</p> 	<p>FarmVille (June 2009)</p> 	<p>MiniFazenda (December 2009)</p> 
<p>Poker Stars (2000)</p>  <p>Party Poker (2001)</p> 	<p>Zynga Poker (September 2008)</p> 	<p>Vostu Poker (August 2010)</p> 

Examples of Pre-Zynga Games	Zynga	Vostu
<p data-bbox="272 283 505 359">Pet Society (September 2008)</p>  <p data-bbox="272 537 574 613">Super Poke Pet (March 2009)</p>  <p data-bbox="272 833 578 909">Happy Pets (November 2009)</p> 	<p data-bbox="669 300 1019 333">PetVille (December 2009)</p> 	<p data-bbox="1146 300 1520 333">Pet Mania (November 2010)</p> 
<p data-bbox="272 1100 477 1176">Restaurant City (April 2009)</p> 	<p data-bbox="669 1100 1068 1134">Café World (September 2009)</p> 	<p data-bbox="1146 1100 1459 1134">Café Mania (May 2010)</p> 

Examples of Pre-Zynga Games	Zynga	Vostu
<p data-bbox="272 296 505 363">My Town (November 2009)</p>  <p data-bbox="272 583 561 659">My City Life (January 2010)</p>  <p data-bbox="272 879 602 915">Social City (March 2010)</p> 	<p data-bbox="670 296 1024 327">CityVille (December 2010)</p> 	<p data-bbox="1148 296 1455 327">Mega City (April 2011)</p> 

148. More specifically, Zynga alleges that Vostu copied several features of Zynga's games, including game plots, blocky-style characters, images of buildings and other game assets, icons, and icon arrangement. None of the features or elements that Zynga complains of is original to Zynga or otherwise something over which Zynga can claim robust copyright protection.

#### Breakdown of Zynga's Specious Allegations

##### *Restaurant Management Games*

149. Zynga claims that Vostu's Café Mania copied Zynga's Café World.

150. Both Vostu's Café Mania and Zynga's Café World are restaurant management games.

151. Restaurant management games are a popular genre of online social games.

152. Playfish's Restaurant City was the first popular restaurant management online social

1 game.

2 153. Playfish's Restaurant City preceded Zynga's Café World in the market.

3 154. Following the release of Playfish's Restaurant City, numerous companies released  
4 restaurant management games.

5 155. In Playfish's Restaurant City, the user was represented by an avatar that the user  
6 could customize to wear different clothes and have different looks. The user's avatar was a chef  
7 in the game who prepared food for virtual customers, who were represented by the user's  
8 "friends" on the social network. In addition to "serving" friends in the restaurant, the user could  
9 decorate the restaurant with different wallpaper, floor tiles, tables, chairs, etc. A player could  
10 earn virtual money within the game by playing the game, or he could bypass hours of game play  
11 and pay real world money for virtual money to use. The virtual money could be used to buy  
12 special decorations for the restaurant or avatar, for example. Within the game, a user could  
13 "visit" friends' neighboring restaurants to see their décor.

14 156. Zynga released its Café World after Playfish's Restaurant City.

15 157. Like Playfish's Restaurant City, Zynga's Café World also had a customized avatar  
16 chef; social network friends visiting the café as diners; customized decoration options for the  
17 restaurant; the ability to visit friends' cafes; a "buzz" rating which is determined by how many  
18 customers the user serves successfully, and which determines how many customers walk into the  
19 user's café; a cookbook which allows the user to unlock new dishes as the game progresses; and  
20 the ability to acquire virtual money through game play or by paying real world money.

21 158. Vostu believes and therefore alleges that the team that developed Zynga's Café  
22 World viewed Playfish's Restaurant City during the time it was developing Café World.

23 159. Currently, there are more than ten online social games in the restaurant management  
24 genre, including Zynga's Café World and Vostu's Café Mania.

25 160. Not surprisingly, they all have tables and chairs, chef avatars, menus for selecting  
26 items to cook, a variety of items on the menu, and customers who walk into the café and leave  
27 dissatisfied if they are not served promptly. These options are typical of, dictated by, inseparable  
28 from, indispensable to, or a standard treatment of the idea of a restaurant management game.



161. Zynga claims that Café Mania “copies and reproduces Café World’s decoration and design, as well as its blocky-style characters, art assets, icons, furniture design, information arrangement and icon arrangement.”

162. None of the features or elements that Zynga complains of is original to Zynga or otherwise something over which Zynga can claim robust copyright protection.

163. Paragraph 66 of Zynga’s Complaint includes an alleged side-by-side comparison of a full screen café image from Zynga’s Café World and Vostu’s Café Mania. Here is the comparison included in Zynga’s Complaint:

**Zynga’s Café World**



**Vostu’s Café Mania**



164. These images, like those of the city-building game referenced above, appeared in press coverage that Zynga seeded and broadcast around the world. What Zynga failed to show in its Complaint was the similarity of many of the restaurant management games starting with Playfish’s Restaurant City, all of which have similar decoration and design options, blocky-style characters, art assets, icons, furniture design, etc. This similarity is reflected in the following screenshots from restaurant management games, identified by names and introduction dates of the respective games.



**Playfish's Restaurant City  
(April 2009)**



**Zynga's Café World (Sept. 2009)**



**Vostu's Café Mania (June 2010)**



**You Dong Network's Café Time  
(November 2010)**



**Metrogames's Tea4Friends  
(June 2011)**



165. Where there are similarities between Zynga's Café World and Vostu's Café Mania, they are common to many restaurant management online social games.

166. For example, one of the entertaining aspects of restaurant management games in general is the ability to decorate and "customize" a user's café.

167. A user in most restaurant management games can choose, for example, different colors of wallpaper, different floor tiles, and different window shapes.

1 168. Currently, Café Mania’s customization feature for a user’s café has a choice of 116  
2 different tables, 116 different chairs, 73 different doors, 73 different windows, 108 different floor  
3 tiles, 107 different wallpapers, 52 different stoves, 39 different counters, and 592 other  
4 decorations, totaling 1,276 items for purchase. With so many items, it is not surprising that some  
5 decorative options are similar to items available in other restaurant management games like  
6 Zynga’s Café World.

7 169. Though many restaurant management games are built with the same basic standard  
8 elements, games like Vostu’s Café Mania rise to the top and maintain their popularity because  
9 Vostu continuously introduces new features, themes, mechanics, and promotions within its  
10 games; pays careful attention to its users; provides top-notch customer service; and localizes the  
11 content to the cultural and demographic preferences of its users. Café Mania at the time of its  
12 launch looks nothing like Café Mania now.

13 170. For example, in Paragraph 66 of the Complaint, Zynga suggests that Vostu has  
14 infringed upon a mohawk hairstyle available in the avatar customization menu for Zynga’s Café  
15 World.

16 171. All popular restaurant management games on Facebook allow the user to customize  
17 his or her avatar with different hair, skin tone, clothes, and other decorations.

18 172. Playfish’s Restaurant City provided customized hairstyles for avatars months before  
19 Zynga launched Café World with that feature.

20 173. Specifically, Playfish’s Restaurant City has a “mohawk” hairstyle.

21 174. Vostu believes and therefore alleges that Zynga’s Café World design team looked at  
22 Restaurant City’s hairstyles when coming up with ideas for hairstyles in Café World.

23 175. Vostu’s Café Mania built an avatar customization feature with its own innovations  
24 and localized content.

25 176. To allow a broader array of avatar customization, Café Mania now has seventy-five  
26 different “hairstyle” choices for its avatar customization feature.

27 177. In contrast, Zynga’s Café World and Playfish’s Restaurant City have approximately  
28 fifteen hairstyle choices each.

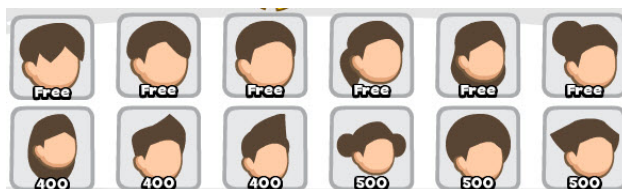
178. It is not surprising that among the seventy-five different options, Café Mania included a mohawk.

179. Below are examples of hair choices available in Café Mania, Restaurant City, and Café World:

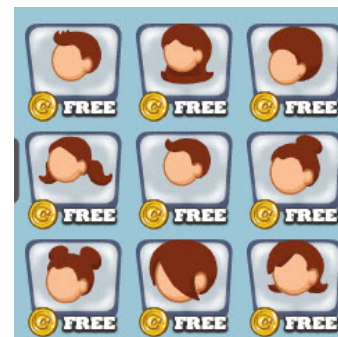
**Examples of Vostu's Café Mania Hair Choices**



**Examples of Playfish's Restaurant City Hair Choices**



**Examples of Zynga's Café World Hair Choices**



180. The wide selection of avatar customization features is just one example of Vostu's innovation in Café Mania.

181. Further, Zynga's Complaint cherry-picks examples of icons to "compare" in Paragraph 66. These icons are common and obvious representations of items that are entitled to minimal, if any, protection and, if so, only to the extent that they reflect Zynga's original creative expression. If they show anything, these images show how similar Zynga's own Café World is to its predecessor, Playfish's Restaurant City.

*Clothing Icons*

182. In Paragraph 66 of the Complaint, Zynga suggests that Vostu has infringed with its use of a clothing icon to link to the avatar customization menu for Zynga's Café World.

183. Zynga includes the following images to suggest copying by Vostu:

**Zynga's Café World****Vostu's Café Mania**

184. Zynga's Complaint neglects to mention the use of a clothing icon in Restaurant City.

185. Playfish's Restaurant City provided a clothing icon to link to its avatar customization menu months before Zynga used a similar icon in Café World.

186. Playfish, Zynga, and Vostu employ the following icons to link to the avatar customization menu, shown with names and introduction dates of their respective games:

**Playfish's Restaurant City  
(April 2009)****Zynga's Café World  
(September 2009)****Vostu's Café Mania  
(May 2010)**

187. Restaurant management games commonly feature an avatar (i.e., a character representing the game player).

188. In such games, the player commonly can modify the appearance of the avatar, including by changing the clothing the avatar is wearing.

189. Using an icon that looks like an article of clothing to represent this functionality is

1 typical of, dictated by, inseparable from, indispensable to, or a standard treatment of the idea of  
 2 an icon that allows players to access functionality for changing their clothes.

3 190. Any similarity between Zynga's clothing icon and Vostu's clothing icon relates to  
 4 aspects of design that are not protectable by Zynga.

5 191. The Playfish clothing icon depicted in Paragraph 186 above preceded the Zynga  
 6 clothing icon in the marketplace.

7 192. Vostu believes and therefore alleges that the creator of the Zynga clothing icon  
 8 viewed the Playfish clothing icon before finalizing the Zynga clothing icon.

### 9 *Menu Icons*

10 193. In Paragraph 66 of the Complaint, Zynga suggests that Vostu has infringed upon a  
 11 menu icon for selecting food to prepare in Zynga's Café World. Zynga includes the following  
 12 images to suggest copying by Vostu:

13 **Zynga's Café World**



18 **Vostu's Café Mania**



21 194. Zynga's Complaint neglects to mention the use of a menu icon in Playfish's  
 22 Restaurant City.

23 195. Playfish's Restaurant City provided a menu icon for selecting food months before  
 24 Zynga launched Café World with that icon.

25 196. The menu icons for selecting food within all three games are as follows; they appear  
 26 with the names and introduction dates of the respective games.  
 27  
 28



**Playfish's Restaurant City  
(April 2009)**



**Zynga's Café World  
(September 2009)**



**Vostu's Café Mania  
(May 2010)**



197. Restaurant management games such as Café Mania, Restaurant City, and Café World feature the ability to cook different kinds of food.

198. This functionality is typical of, dictated by, inseparable from, indispensable to, or a standard treatment of the idea of a restaurant management game.

199. Using an icon that looks like a menu to represent this functionality is typical of, dictated by, inseparable from, indispensable to, or a standard treatment of the idea of an icon that allows players to access a selection of different kinds of food to prepare within the game.

200. Any similarity between Zynga's menu icon and Vostu's menu icon relates to aspects of design that are not protectable by Zynga.

201. The Playfish menu icon depicted in paragraph 196 above preceded the Zynga menu icon in the marketplace.

202. Vostu believes and therefore alleges that the creator of the Zynga menu icon viewed the Playfish menu icon before finalizing the Zynga menu icon.

#### *Function Icons*

203. In Paragraph 66 of the Complaint, Zynga suggests that Vostu has infringed upon a function icon in Zynga's Café World. Zynga includes the following images to suggest copying by Vostu:

**Zynga's Café World****Vostu's Café Mania**

204. Zynga's Complaint neglects to mention the use of a function icon in Playfish's Restaurant City.

205. Playfish's Restaurant City provided a functional icon months before Zynga launched Café World with that icon.

206. The three games use the following icons to access what the games all refer to (in English or Portuguese) as "functional" options; they appear with the names and introduction dates of the respective games.

**Playfish's Restaurant City  
(April 2009)****Zynga's Café World  
(September 2009)****Vostu's Café Mania  
(May 2010)**

207. Any similarity between Zynga's function icon and Vostu's function icon relates to aspects of design that are not protectable by Zynga.

208. The Playfish "functional options" icon depicted in paragraph 206 above preceded the Zynga "functional options" icon in the marketplace.

209. Vostu believes and therefore alleges that the creator of the Zynga "functional options" icon viewed the Playfish "functional options" icon before finalizing the Zynga "functional options" icon.

210. Menu items that allow users to change settings are traditionally symbolized by a gear



or gears, including on Google's search engine ("Options"), Apple's iPhone ("Settings") and Microsoft's Internet Explorer browser ("Tools").

### *Furniture Design*

211. In Paragraph 66 of the Complaint, Zynga alleges that Vostu copied the 1950s diner chair from Zynga's Café World. Zynga includes the following images to suggest copying by Vostu:

**Zynga's Café World**



**Vostu's Café Mania**



212. Zynga's Complaint neglects to mention the use of a 1950s diner chair in Playfish's Restaurant City.

213. In fact, Playfish's Restaurant City had a 1950s diner chair when it was released months before Zynga's Café World.

214. The following examples are chairs available in Restaurant City, Café World, and Café Mania, with names and introduction dates of the respective games:

**Playfish's Restaurant City  
(April 2009)**



**Zynga's Café World  
(September 2009)**



**Vostu's Café Mania  
(May 2010)**



215. Cafés and restaurants commonly have chairs.

216. 1950s style chairs are distinctive in design.

217. 1950s style chairs are common in restaurant and café décor.

218. Restaurant management games such as Playfish's Restaurant City, Zynga's Café World, and Vostu's Café Mania commonly feature the ability to select various chairs to decorate

1 the user's café.

2 219. Indeed, Café Mania offers users the choice of 116 different chairs to use in  
3 decorating their café. With this many options, it is thus not surprising that one of the options  
4 would be a 1950s style diner chair.

5 220. This functionality is typical of, dictated by, inseparable from, indispensable to, or a  
6 standard treatment of the idea of a restaurant management game.

7 221. Any similarity between Zynga's furniture design and Vostu's furniture design relates  
8 to aspects of design that are not protectable by Zynga.

9 222. The Playfish chair depicted in paragraph 214 above preceded the Zynga chair in the  
10 marketplace.

11 223. Vostu believes and therefore alleges that the creator of the Zynga chair viewed the  
12 Playfish chair before finalizing the Zynga chair.

13 224. Overall, elements from Café World that Zynga alleges are infringed by Vostu's Café  
14 Mania are present in Restaurant City. Vostu believes and therefore alleges that none of these  
15 preexisting elements were disclosed to the U.S. Copyright Office when the application to register  
16 Café World was filed.

17 ***City-Building Games***

18 225. Zynga claims that Vostu's MegaCity copied Zynga's CityVille.

19 226. Both Vostu's MegaCity and Zynga's CityVille are city-building games.

20 227. The city-building genre dates back to the SimCity franchise more than twenty years  
21 ago.

22 228. Playdom's Social City was the first popular city-building game on a social network.

23 229. Playdom's Social City preceded Zynga's CityVille.

24 230. Vostu believes and therefore alleges that Zynga viewed Playdom's Social City  
25 during the time it was developing CityVille.

26 231. Vostu believes and therefore alleges that Zynga conducted a market survey of Social  
27 City users when it was developing CityVille.

28 232. Zynga watched a host of city-building games come on the market before it created

1 CityVille.

2 233. Exhibit D is a copy of an article describing the growth of city-building games on the  
3 Facebook platform; it is also available at [http://www.insidesocialgames.com/2010/02/17/as-](http://www.insidesocialgames.com/2010/02/17/as-simcity-franchise-stagnates-developers-grow-city-building-games-on-facebook/)  
4 [simcity-franchise-stagnates-developers-grow-city-building-games-on-facebook/](http://www.insidesocialgames.com/2010/02/17/as-simcity-franchise-stagnates-developers-grow-city-building-games-on-facebook/).

5 234. Today there are more than twenty city-building games on social networks.

6 235. Zynga alleges that Vostu's MegaCity replicates Zynga's "buildings, land plots, street  
7 arrangements, decorations, mechanics, buttons, game board layouts, color scheme and  
8 information arrangement." Complaint ¶ 60.

9 236. Many city-building games have a very similar look and feel, and incorporate very  
10 similar streets, decorations, buildings, and icons.

11 237. None of the features or elements of which Zynga complains is original to Zynga or  
12 otherwise something over which Zynga can claim robust copyright protection.

13 238. Specifically, the idea that a house, a hamburger joint, a hotel, and a coffee shop  
14 might all be in a city built by a user is simply not original to Zynga.

15 239. These options are typical of, dictated by, inseparable from, indispensable to, or a  
16 standard treatment of the idea of a city-building game.

17 240. Similarly, it is typical that a city would have streets that a user can arrange in a grid.

18 241. It is also typical that a city would have trees and fields.

19 242. These options are typical of, dictated by, inseparable from, indispensable to, or  
20 standard treatment of the idea of a city-building game.

21 243. Zynga's Complaint uses an aerial picture of a virtual city in Zynga's CityVille and  
22 another in Vostu's MegaCity to suggest Vostu copied Zynga. Zynga's side-by-side comparison  
23 ignores the uniformity in game layout and visual elements that is pervasive across the genre of  
24 city-building games.

25 244. Below are examples of aerial views of various city-building games, with names and  
26 introduction dates of the respective games:

**Playdom's Social City  
(March 2010)**



**Gamester's Townster  
(September 2010)**



**LIFO Interactive's Train  
City (December 2010)**



**Zynga's CityVille  
(December 2010)**



**Vostu's MegaCity  
(April 2011)**



**Que Pasa's Cidade  
Maravilhosa (May 2011)**



245. Vostu believes and therefore alleges that Zynga was aware of the similarities amongst city-building games depicted in the paragraph above, yet did not include these other games in its Complaint.

246. City-building games employ standard types of buildings a user can place into the game. For example, many city-building games have a "burger joint," featuring a hamburger on top, the use of red in the building exterior (harkening to McDonald's or Burger King), and a square configuration.

247. Playdom's Social City had a burger joint many months before Zynga released its burger joint.

248. Below are pictures of the burger joints available in various city-building games, with the names and introduction dates of the respective games.

**Playdom's Social City (March 2010)****LIFO's Train City (December 2010)****Zynga's CityVille (December 2010)****Vostu's MegaCity (April 2011)**

249. The Playdom burger joint depicted in paragraph 248 above preceded the Zynga burger joint in the marketplace.

250. Vostu believes and therefore alleges that the creator of the Zynga burger joint viewed the Playdom burger joint before finalizing the Zynga burger joint.

251. As depicted in the burger joint image above, Playdom's Social City put oversized graphic items on top of its business buildings to denote the type of business. For example, a large burger on top of a burger joint, a book on the front of a book store, and a bowling pin on top of a bowling alley.

252. Vostu believes and therefore alleges that the creators of Zynga's CityVille viewed the graphical representation of businesses in Playdom's Social City before making the graphical representation of businesses in CityVille.

253. Vostu believes and therefore alleges that the creators of Zynga's CityVille viewed the graphical representation of a book store and a bowling alley in Playdom's Social City before making the graphical representations of a book store and a bowling alley in Zynga's CityVille.

254. Zynga alleges that Vostu's MegaCity copies CityVille's menu bar icons.

255. Other games in this genre have similar icons representing tasks on status and menu bars.

256. Any similarity between Zynga's icons and Vostu's icons relates to aspects of design that were not original to Zynga and are not protectable.

1           257. For example, SimCity games as far back as 1999 used a bulldozer icon for building  
2 removal.

3           258. Vostu believes and therefore alleges that the bulldozer icon first made an appearance  
4 on the menu bar in city-building games on social networks in MyTown, a Facebook game by  
5 Broken Bulb Studios from November 2009.

6           259. Vostu believes and therefore alleges that MyTown also had a stack of money as the  
7 icon representing virtual currency in the status bar, just like Zynga's subsequent CityVille,  
8 Vostu's MegaCity, and a host of other city-building games.

9           260. Zynga further alleges that Vostu copied "mistakes" or "bugs" in Zynga's CityVille  
10 game.

11           261. Zynga cites exactly one example of such a claimed "mistake" or "bug" in its  
12 CityVille game that also appears in Vostu's MegaCity, namely, the fact that community buildings  
13 are not required to connect to roads like residential and business buildings.

14           262. If this were a "bug," one would have expected Zynga to have fixed it.

15           263. In fact, Zynga alleges it has not fixed this supposed "mistake."

16           264. The treatment of community buildings in MegaCity is not a mistake. It is a  
17 purposeful part of the game play.

18           265. In MegaCity, a residential or business building must be connected to a road. The  
19 reason for this requirement is that the avatars that walk on the city streets must be able to walk  
20 into and disappear inside the building for the user to collect money from those avatars. So, for  
21 example, if a city has a coffee shop (a business building), the coffee shop must be connected to a  
22 road so that the avatars (*i.e.*, customers) can walk into the coffee shop and the user can collect  
23 money from them. Similarly, a city with an apartment building or a suburban house has avatars  
24 walk from the street to the inside of the house to increase the city's residential population. If a  
25 house or a business is not connected to a road, the graphic presentation changes and the  
26 "detached" structure does not provide the player with the opportunity to earn money from the  
27 avatars roaming the city's streets.

28           266. Community buildings are different. Community buildings such as a soccer field and



1 a helicopter pad in MegaCity do not have to be connected to a road. A user has the option to  
2 connect them, or not. The fact that users have an option with roads leading to community  
3 buildings in Vostu's MegaCity is not a "bug" or "mistake." There are two reasons for this. First,  
4 the game play with the community building is complete upon its construction. It allows the user  
5 to be able to put more residents in its population, and it returns money on fixed time intervals.  
6 Avatars in Vostu's MegaCity do not disappear inside community buildings for the user to  
7 "collect" money from them. Even if the community building is connected to a road, the avatar  
8 just walks past the building. Second, aesthetically, a user may wish to place a soccer field or a  
9 helicopter pad in a park or grassy area, or next to a parking lot, and not adjacent to a road. Since  
10 there is no need for the walking avatars to enter the community building, MegaCity affords the  
11 user that choice in designing the look of his city.

12 267. The concept of decorations in Vostu's MegaCity is similar to that of community  
13 buildings. Decorations – which can include a beach volleyball court or an igloo – do not need to  
14 be placed adjacent to a road. The user has the option to do so, but is not required to do so. This is  
15 not a "bug" or a "mistake." Rather, Vostu's designers have given the user more flexibility in  
16 decorating his or her city with this feature.

17 268. Elements from CityVille that Zynga alleges are infringed by Vostu's MegaCity are  
18 present in other city-building games that predate CityVille. Vostu believes and therefore alleges  
19 that none of these preexisting elements were disclosed to the U.S. Copyright Office when the  
20 application to register CityVille was filed.

### 21 *Farming Games*

22 269. Zynga alleges that Vostu copied Zynga's FarmVille with Vostu's MiniFazenda.

23 270. Neither MiniFazenda nor any element of it is substantially similar to any protectable  
24 element of Zynga's FarmVille.

25 271. Zynga includes no examples or specifics in its Complaint about what aspect of  
26 MiniFazenda is allegedly copied.

27 272. Any similarity between Zynga's FarmVille game and Vostu's MiniFazenda game  
28 relates to aspects of design that are not protectable by Zynga.

1           273. Zynga released FarmVille after other farming games were already available on  
2 Facebook, including FarmTown and myFarm.

3           274. Vostu believes and therefore alleges that Zynga's FarmVille team viewed FarmTown  
4 during the time it was developing FarmVille.

5           275. Vostu believes and therefore alleges that Zynga's FarmVille team viewed myFarm  
6 during the time it was developing FarmVille.

7           276. On July 15, 2009, Christopher Mack wrote on the blog "Inside Social Games":  
8 "Farming games are the most popular games on Chinese social networks, and they're starting to  
9 gain more steam on Facebook now too. The first was myFarm, but then SlashKey.com came  
10 along and had much more success with FarmTown (which actually debuted at #4 in the Top 25  
11 two months ago and is still pretty popular today). Though it wasn't an original concept, the  
12 virtual farming game was still pretty good. Now, another clone has emerged: FarmVille.  
13 FarmVille is from Zynga, a company that has made a name for itself by acquiring or emulating  
14 many of the most successful games on Facebook and MySpace." The article is available on the  
15 Web at [http://www.insidesocialgames.com/2009/07/15/with-farmville-zynga-joins-the-facebook-](http://www.insidesocialgames.com/2009/07/15/with-farmville-zynga-joins-the-facebook-farming-fray/)  
16 [farming-fray/](http://www.insidesocialgames.com/2009/07/15/with-farmville-zynga-joins-the-facebook-farming-fray/). Exhibit E is a copy of that article.

17           277. Another commentator tracked the history of farming games, also noting the origins  
18 in Chinese farming games (Happy Farm), then myFarm and later FarmTown. This commentator  
19 notes that Zynga's FarmVille was neither first, nor original. The article is available at  
20 <http://www.chinasocialgames.com/?p=400>. Exhibit F is a copy of that article.

21           278. Another Internet article reviewed FarmVille upon its release and announced: "If  
22 you've played FarmTown at any point in the past few months then you won't need any education  
23 about how to use Zynga's version of the game as it's almost an exact duplicate." The article is  
24 available at <http://www.allfacebook.com/zynga-farmville-2009-06>. Exhibit G is a copy of that  
25 article.

26           279. Similarly, the FacebookForum.net reported about FarmVille: "This game is just a  
27 knock-off of another Facebook's game, FarmTown! Developed by 'Slash Key'. It was created  
28 before FarmVille." Exhibit H is a copy of the relevant portion of that forum, which resides on the

Web at <http://www.thefacebookforum.net/t1898-playfish-vs-zynga-the-never-ending-copying-battle>.

280. SF Weekly elaborates on the similarity between FarmTown and FarmVille: “In both games, tiny avatars with big heads plant square plots of soil with different crops, harvest them to earn virtual coins after a time, and acquire Facebook friends as neighbors to help out on the farm and exchange goods. The mechanics of the games – down to screen commands and layout – are more or less identical.” (“FarmVillains,” SF Weekly, September 8-14, 2010, at page 17 (paper version).)

281. Here is how Inside Social Games reported the two farm games looked in 2009:



282. As referenced above, on June 17, 2011, the maker of the early farming game myFarm sued Zynga for copyright infringement, among other things. The plaintiff in that case accused Zynga of illegally copying myFarm source code that Zynga acquired during the acquisition discussions it had with the company.

283. In the farming space, Vostu believes and therefore alleges that Zynga soon eclipsed the pre-existing farming games by leveraging its powerful Facebook distribution channel and cross-promoting FarmVille to users of games like Mafia Wars.

284. Indeed, Zynga's FarmVille became the biggest farming game and, until recently, the biggest online social game in the world.

285. Vostu's MiniFazenda is one of many farming games on social networks.

286. Many of these farming games have a very similar look and feel, use very similar game mechanics, and incorporate very similar characters and icon design and arrangement.

287. For example, the farm games that followed FarmTown and myFarm featured plots of land to be plowed, planted, and harvested. The dirt was brown and contained diagonal rows in which the seeds could be sown.

288. Below are pictures of how the plots of land look in various farming games, with names and introduction dates of the respective games.

**SocialApps' MyFarm  
(November 2008)**



**Slashkey's FarmTown  
(April 2009)**



**Zynga's FarmVille  
(June 2009)**



**Green Patch's Lil' Farm  
Life (Aug. 2009)**



**Country Life's Country Life  
(Nov. 2009)**



**Vostu's MiniFazenda  
(Jan. 2010)**



289. This functionality is typical of, dictated by, inseparable from, indispensable to, or a standard treatment of the idea of a farming game. Moreover, any similarity between Zynga's land design and Vostu's land design relates to aspects of the design that are not protectable by Zynga.

290. The Slashkey FarmTown plot of land above preceded the Zynga plot of land in the marketplace.

291. Vostu believes and therefore alleges that the creator of the Zynga plot of land viewed the Slashkey FarmTown plot of land before finalizing the Zynga plot of land.

292. The Social Apps MyFarm plot of land above preceded the Zynga plot of land in the marketplace.

293. Vostu believes and therefore alleges that the creator of the Zynga plot of land viewed the Social Apps MyFarm plot of land before finalizing the Zynga plot of land.

294. Graphical representations of cows and barns across farm games are also similar.

295. Below are pictures of how the cows look in various farming games, with names and introduction dates of the respective games.

**Slashkey's  
FarmTown Cow  
(April 2009)**



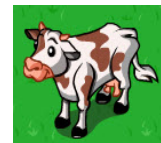
**Zynga's  
FarmVille Cow  
(June 2009)**



**Lil' Farm Life Cow  
(August 2009)**



**Vostu's  
MiniFazenda Cow  
(December 2009)**



296. Cows are typical of, dictated by, inseparable from, indispensable to, or standard treatment of the idea of a farming game.

297. The Slashkey FarmTown cow depicted in paragraph 295 above preceded the Zynga cow in the marketplace.

298. The Zynga cow used the same cartoonish style (smiling cow with a bigger-than-natural head) as Slashkey's FarmTown cow.

299. Vostu believes and therefore alleges that the creator of the Zynga cow viewed the FarmTown cow before finalizing the Zynga cow.

300. Below are pictures of how the barns look in various farming games, with names and introduction dates of the respective games.

**Slashkey's  
FarmTown Barn  
(April 2009)**



**SocialApps'  
myFarm Barn  
(May 2009)**



**Zynga's  
FarmVille Barn  
(June 2009)**



**Vostu's  
MiniFazenda Barn  
(December 2009)**



301. Barns are typical of, dictated by, inseparable from, indispensable to, or standard treatment of the idea of a farming game.

302. Any similarity between Zynga's barn design and Vostu's barn design relates to aspects of design that are not protectable by Zynga.



1           303. The Slashkey FarmTown barn depicted in paragraph 300 above preceded the Zynga  
2 barn in the marketplace.

3           304. Vostu believes and therefore alleges that the creator of the Zynga barn viewed the  
4 Slashkey FarmTown barn before finalizing the Zynga barn.

5           305. The similarity in these common images does not suggest copyright infringement by  
6 any one game. Rather, it suggests a common way to depict a cow or a barn.

7                                   ***Pet Care Games***

8           306. Another popular genre of online social games is pet care games.

9           307. Zynga alleges that Vostu's Pet Mania is a copy of Zynga's PetVille.

10          308. Neither Vostu's Pet Mania nor any element of it is substantially similar to any  
11 protectable element of Zynga's PetVille.

12          309. Any similarity between Zynga's pet care game and Vostu's pet care game relates to  
13 aspects of design that are not protectable by Zynga.

14          310. Zynga's PetVille was not the first pet care game on social networks.

15          311. Vostu believes and therefore alleges that Playfish launched Pet Society in September  
16 2008.

17          312. Vostu believes and therefore alleges that Slide followed with its Super Poke Pet in  
18 March 2009.

19          313. Vostu believes and therefore alleges that Crowdstar launched its pet care game  
20 Happy Pets in November 2009.

21          314. Vostu believes and therefore alleges that Zynga's PetVille development team viewed  
22 Playfish's Pet Society during the time it was creating PetVille.

23          315. Vostu believes and therefore alleges that Zynga's PetVille development team viewed  
24 Slide's Super Poke Pet during the time it was creating PetVille.

25          316. Vostu believes and therefore alleges that Zynga's PetVille development team viewed  
26 Crowdstar's Happy Pets during the time it was creating PetVille.

27          317. Outside online social gaming, the pet care game genre has been popular for years,  
28 long before Zynga launched PetVille. Littlest Pet Shop is a long-standing console game and



1 Moshi Monsters is an online game from 2008 that has more than 50 million monthly active users.

2 318. When Zynga launched PetVille in December 2009, Vostu believes and therefore  
3 alleges that PetVille quickly became one of the fastest growing games with a game that emulated  
4 its predecessors by leveraging its robust Facebook distribution channels. One forum described  
5 PetVille as “basically the same as Pet Society.” Exhibit H, discussed above, is a copy of the  
6 relevant portion of the forum.

7 319. Zynga alleges that Vostu’s Pet Mania copied Zynga’s pet image and design.

8 320. Any similarity between Zynga’s pet design and Vostu’s pet design relates to aspects  
9 of design that are not protectable by Zynga.

10 321. The following illustrates a Pet Society “pet” avatar and the subsequently-released  
11 PetVille “pet” avatar from Zynga, with names and introduction dates of the respective games.

12 **Playfish’s Pet Society (2008)**



**Zynga’s PetVille (2009)**



19 322. Vostu believes and therefore alleges that the creator of the Zynga “pet” avatar above  
20 viewed Pet Society before finalizing the Zynga “pet” avatar.

### 21 ***Poker Games***

22 323. Zynga alleges that Vostu Poker copies Zynga Poker.

23 324. Neither Vostu Poker or any element therein is substantially similar to any protectable  
24 element of Zynga Poker.

25 325. Any similarity between Zynga’s poker game and Vostu’s poker game design relates  
26 to aspects of design that are not protectable by Zynga.

27 326. Zynga Poker followed a host of successful online poker games.

327. Zynga in Paragraph 68 of its Complaint includes side by side screen shots of Zynga and Vostu's poker games.

### Zynga Poker



### Vostu Poker



328. A poker room necessarily contains many elements which are by nature essential to the game of poker, such as a table, chairs, a dealer, cards, and chips.

329. Here are images from two popular online poker games, Real 3D Games' poker and Showoff Poker.

### Real 3D Games' Poker

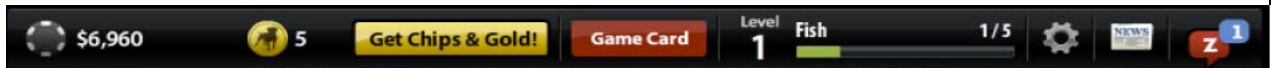


### Showoff Poker



330. Zynga also includes images from the toolbars from Zynga Poker and Vostu Poker in its Complaint. What it does not show is that poker game status bars generally have the same icons and place the amount of money a player has first in the order of icons. Below are status bars from several competing poker games, with names of the respective games:

1 Zynga Poker by Zynga



4 VN Poker by Socialinus



6 6Waves Poker by 6Waves



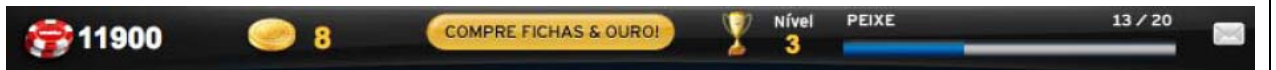
9 Ultimate Poker Pro by You Social



12 The Social Poker by Gazzag



15 Vostu Poker by Vostu



18 331. Any similarity between Zynga's poker game and Vostu's poker game relates to  
19 aspects of design that are not protectable by Zynga.

20 332. Each of the elements from Zynga Poker that Zynga alleges Vostu Poker infringes is  
21 present in poker games that predate Zynga Poker. Vostu believes and therefore alleges that none  
22 of these preexisting elements were disclosed in the application to register Zynga Poker with the  
23 U.S. Copyright Office.

### 24 **Zynga Has Copied Vostu's Games**

25 333. Zynga's Complaint improperly portrayed Vostu as a company that produces  
26 "copycat" games without its own unique innovation. That is simply false. Vostu is proud of the  
27 games it has designed and the innovative features it has introduced to the online social gaming  
28 world.

1 334. Vostu believes and therefore alleges that Zynga has admired Vostu's games and has  
2 often incorporated features and mechanics from Vostu's games into Zynga games.

3 335. For example, Vostu believes and therefore alleges that Vostu's MiniFazenda  
4 introduced the concept of customized backgrounds before Zynga's FarmVille.

5 336. MiniFazenda launched its new customized backgrounds (*e.g.*, a beach) on or about  
6 October 14, 2010.

7 337. Vostu believes and therefore alleges that Zynga's FarmVille China launched a choice  
8 of backgrounds in early 2011.

9 338. Vostu believes and therefore alleges that Zynga's FarmVille team viewed  
10 MiniFazenda's customized backgrounds when designing its own customized backgrounds.

11 339. Moreover, the greenhouse feature in MiniFazenda is another example of Vostu's  
12 many innovations that Zynga has followed. The greenhouse feature is a mechanic within  
13 MiniFazenda through which a user can choose to use a greenhouse to harvest and breed new  
14 crops.

15 340. After Vostu launched this greenhouse feature in its farming game on or about  
16 November 29, 2010, Zynga launched a greenhouse feature in FarmVille in February 2011.

17 341. Vostu believes and therefore alleges that Zynga viewed the greenhouse feature in  
18 Vostu's MiniFazenda before creating the greenhouse feature on Zynga's FarmVille.

19 342. Another example of Zynga building on Vostu's innovations is the Café World avatar  
20 rendering system.

21 343. Vostu believes and therefore alleges that Zynga redesigned its avatar rendering  
22 system in Café World to make it more like that of Vostu's Café Mania.

23 344. Moreover, Zynga Poker has emulated Vostu Poker.

24 345. On January 13, 2011, Vostu Poker launched an innovative "hand reference" feature  
25 in Vostu Poker called "Dica Pro." Vostu did this because, based on its analysis of its users, it  
26 knew that Orkut users were somewhat novice in their poker skills. Thus, Vostu created a feature  
27 whereby the game gives hints to users about how strong their hands are. The user has to pay to  
28 activate the feature.

1 346. On March 1, 2011, Zynga released a feature called “Hand Meter” in Zynga Poker.

2 347. The “Hand Meter” feature in Zynga Poker gives users hints about the strength of  
3 their hands. Users have to pay to activate this feature.

4 348. Vostu believes and thereby alleges that Zynga’s Zynga Poker team viewed Vostu’s  
5 “Dica Pro” feature before designing Zynga Poker’s “Hand Meter” feature.

6 349. These are just a few examples of how Zynga has introduced features and mechanics  
7 into its games after those same features and mechanics were pioneered and launched by Vostu.

8 **FIRST CAUSE OF ACTION**

9 **(Declaratory Judgment of Non-Infringement for MiniFazenda)**

10 350. Vostu incorporates by reference the allegations above.

11 351. In its Complaint, Zynga has alleged that Vostu has infringed Zynga’s copyright by  
12 developing and publishing the game MiniFazenda.

13 352. Based on the foregoing allegations, there exists between the parties a substantial  
14 controversy of sufficient immediacy and reality to warrant declaratory relief.

15 353. Vostu seeks declaratory judgment pursuant to 28 U.S.C. § 2201 and Federal Rule of  
16 Civil Procedure 57 that Vostu has not infringed Zynga’s copyright by developing the game  
17 MiniFazenda and publishing it in the United States.

18 **SECOND CAUSE OF ACTION**

19 **(Declaratory Judgment of Non-Infringement for Café Mania)**

20 354. Vostu incorporates by reference the allegations above.

21 355. In its Complaint, Zynga has alleged that Vostu has infringed Zynga’s copyright by  
22 developing and publishing the game Café Mania.

23 356. Based on the foregoing allegations, there exists between the parties a substantial  
24 controversy of sufficient immediacy and reality to warrant declaratory relief.

25 357. Vostu seeks declaratory judgment pursuant to 28 U.S.C. § 2201 and Federal Rule of  
26 Civil Procedure 57 that Vostu has not infringed Zynga’s copyright by developing the game Café  
27 Mania and publishing it in the United States.



**THIRD CAUSE OF ACTION**

**(Declaratory Judgment of Non-Infringement for MegaCity)**

358. Vostu incorporates by reference the allegations above.

359. In its Complaint, Zynga has alleged that Vostu has infringed Zynga's copyright by developing and publishing the game MegaCity.

360. Based on the foregoing allegations, there exists between the parties a substantial controversy of sufficient immediacy and reality to warrant declaratory relief.

361. Vostu seeks declaratory judgment pursuant to 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57 that Vostu has not infringed Zynga's copyright by developing the game MegaCity and publishing it in the United States.

**FOURTH CAUSE OF ACTION**

**(Declaratory Judgment of Non-Infringement for Pet Mania)**

362. Vostu incorporates by reference the allegations above.

363. In its Complaint, Zynga has alleged that Vostu has infringed Zynga's copyright by developing and publishing the game Pet Mania.

364. Based on the foregoing allegations, there exists between the parties a substantial controversy of sufficient immediacy and reality to warrant declaratory relief.

365. Vostu seeks declaratory judgment pursuant to 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57 that Vostu has not infringed Zynga's copyright by developing the game Pet Mania and publishing it in the United States.

**FIFTH CAUSE OF ACTION**

**(Declaratory Judgment of Non-Infringement for Vostu Poker)**

366. Vostu incorporates by reference the allegations above.

367. In its Complaint, Zynga has alleged that Vostu has infringed Zynga's copyright by developing and publishing the game Vostu Poker.

368. Based on the foregoing allegations, there exists between the parties a substantial controversy of sufficient immediacy and reality to warrant declaratory relief.



1 369. Vostu seeks declaratory judgment pursuant to 28 U.S.C. § 2201 and Federal Rule of  
2 Civil Procedure 57 that Vostu has not infringed Zynga's copyright by developing the game Vostu  
3 Poker and publishing it in the United States.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Vostu USA, Inc., Vostu LLC, and Vostu, Ltd. pray for judgment as  
6 follows:

- 7 1. For a declaration that Vostu has not infringed Zynga's copyrights with its  
8 MiniFazenda game;
- 9 2. For a declaration that Vostu has not infringed Zynga's copyrights with its Café  
10 Mania game;
- 11 3. For a declaration that Vostu has not infringed Zynga's copyrights with its  
12 MegaCity game;
- 13 4. For a declaration that Vostu has not infringed Zynga's copyrights with its Pet  
14 Mania game;
- 15 5. For a declaration that Vostu has not infringed Zynga's copyrights with its Vostu  
16 Poker game;
- 17 6. For Vostu's attorneys' fees;
- 18 7. For Vostu's costs and disbursements in this action; and
- 19 8. For such other further and equitable and legal relief as the Court shall find just and  
20 proper.

21 **DEMAND FOR JURY TRIAL**

22 Defendants Vostu USA, Inc., Vostu LLC, Vostu, Ltd. hereby demand trial by jury.  
23  
24  
25  
26  
27  
28

1 DATED: July 20, 2011

Munger, Tolles & Olson LLP

2  
3 By: /s/

4 Carolyn Hoecker Luedtke

5 Winston & Strawn LLP

6  
7 By: /s/

8 Andrew P. Bridges

9 Attorneys for Defendants  
10 VOSTU USA, INC., VOSTU LLC, AND  
11 VOSTU, LTD.  
12  
13  
14

15 Pursuant to General Order 45.X.B, I attest that each of the other signatories of this  
16 document concurs in its filing.  
17

18 Dated: July 20, 2011

Winston & Strawn LLP

19  
20 By: /s/

Andrew P. Bridges

21 Attorneys for Defendants  
22 VOSTU USA, INC., VOSTU LLC and  
23 VOSTU, LTD.  
24  
25  
26  
27  
28